IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9402 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKOR GANDAJI RAVCHANDAJI

Versus

DISTRICT MAGISTRATE

Appearance:

MS BANNA S DUTTA for Petitioner

MR KT DAVE ASTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/03/2000

ORAL JUDGEMENT

#. The District Magistrate, Mehsana passed an order in exercise of powers under Section 3(1) of Gujarat Prevention of Anti Social Activities Act, 1985 (`PASA' for short) on 21st June 1999 directing detention of the petitioner. The grounds of detention indicate that the

detaining authority took into consideration eight offence registered against the detenu. The detaining authority also took into consideration the statements of three witnesses recorded on 10th March, 11th March and 12th March, 1999 in respect of incidents that occurred on 1st March, 4th March and 5th March, 1999 respectively as narrated by these witnesses. The identity of these witnesses have not been disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act. The detaining authority considered the possibility of resorting to less drastic remedy and came to the conclusion that considering the activities of the petitioner, the petitioner is required to be immediately prevented from pursuing his activities. The authority found him to be a `dangerous person' as defined under the PASA Act. The authority came to the conclusion that resorting to PASA is only efficacious remedy for immediately preventing the petitioner from pursuing his activities and the order was passed.

#. Ms.Banna Datta, learned advocate appearing for the petitioner has submitted that the order suffers from the vice of gross delay. She has drawn the attention of this Court to the fact that the last registered offence is in relation to offence dated 3rd October, 1998, in that case, the petitioner was bailed out on 25th February, 1999. The statements anonymous witnesses were recorded on 10th, 11th and 12th March, 1999 respectively and the order came to be passed on 21st June, 1999. She further submitted that there is gross delay in passing the order, therefore the order is vitiated and the same may be quashed and set aside.

#. Ms.Dave, learned AGP has opposed this petition. No affidavit in reply is filed by the detaining authority and as such, there is no attempt on the part of the detaining authority to explain the delay.

#. If the date of last registered offence is considered, the order of detention is passed after about 8 months. If the date on which the petitioner was bailed out in the offence is considered, the order of detention is passed after about 4 months and if the date of statements of the anonymous witnesses are considered, which are relevant. The order is passed after about 3 months and one week. The satisfaction recorded by the detaining authority for the immediate need for preventing the petitioner from pursuing his illegal activities, and that, the detention under PASA being only remedy, therefore, cannot be considered as genuine. No attempt is made to explain as

to why the order is passed after such lapse of time. After recording of statments of the anonymous witnesses, the authority has not acted for about 3 months for no tangible reasons. It there was genuine nheed to immediately prevent the petitioner, it was expected of the detaining authoirty to have acted diiligently and quickly. No explanation is given for this dealy. In this background of facts of this case, the petition deserves to be allowed on the ground of delay alone.

#. The petitioner is allowed. The order of detention passed by respondent No : 1 - The District Magistrate, Mehsana against the petitioner THAKOR GANDAJI RAVCHANDAJI is hereby quashed and set aside. The petitioner THAKOR GANDAJI RAVCHANDAJI is ordered to be set at liberty

forthwith, if not required in any other case. Rule is made absolute. No costs.

Date : 6-3-2000 [A.L.Dave, J.]

#kailash#